IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 843 of 1994
With
CRIMINAL MISC.APPLICATION No. 844 & 845 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

==========

1 whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHREE SONAL GUM INDUSTRIES & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
Mr D.K. Puj for MS NIYATI K SHAH for Applicant(s) : 1 - 3.
mR ss pATEL, aDDL.PUBLIC PROSECUTOR for Respondent(s) : 1,
MR BB NAIK for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 17/01/2007

ORAL (COMMON) JUDGMENT

1. In these three petitions with the same parties, provisions of section 482 of the Criminal Procedure

Code, 1973 (for short, 'the Code') are invoked for the relief of quashment of three criminal cases being Criminal Cases No.261, 262 and 263 of 1988 pending in the court of learned Addl.Chief Metropolitan Magistrate, Ahmedabad against the petitioners for the alleged offences punishable under section 276-B read with 278-B of the Income Tax Act, 1961.

2. It was fairly conceded that cumulative interest payable under section 201(1-A) for all the years involved in respect of the deductions at source under sections 192 to 195 of the Income Tax Act, was less than Rs.10,000/- and the tax along with interest was already paid to the credit of the Central Government by the petitioners. In such set of facts, the instruction No.5051 issued on 7.2.1991 by the Central Board of Direct Taxes would squarely apply in the facts of the case and, in compliance thereof, prosecution ought not to have been initiated against the petitioner; but since criminal cases were initiated prior to the aforesaid date of issue of the instruction, the cases had come to be filed.

However, the said instruction clearly mentioned that it would apply to the defaults or failure to pay the taxes deducted at source in time committed prior to 1.4.1989.

3. Learned counsel, Mr D.K. Puj submitted that in view of compliance and full payment by the petitioners, there was complete absence of *mens rea* and prosecution was not likely to serve any purpose since no punishment would be justified in the facts of the case. He relied upon a judgment of the Patna High Court in the matter of ***Ganga Solvent and Ors. vs. State of Bihar (226 ITR 401)*** in support of his argument that continuance of prosecution of the petitioners would, in the peculiar facts, be an abuse of the process of Court. He further submitted that the prosecution in the facts of the present case was launched after more than 10 years of the commission of the alleged offence and long after full payments being made by the petitioners. After such payments having been made in the year 1976-77, notice was issued for the first time in 1987 and the cases were filed in the year 1988 which clearly indicated

discrimination and abuse of the process of Court, according to his submission.

4. In the above peculiar facts and circumstances, the petitions are required to be allowed and accordingly they are **allowed** with the direction that the aforesaid proceedings in criminal cases No. 261, 262 and 263 of 1988 pending before the learned Chief Metropolitan Magistrate, Ahmedabad including the orders taking cognizances against the petitioners are hereby quashed. Rule is made absolute accordingly with no order as to costs.

sd/-
[D. H. Waghela, J.]

msp